

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

JUL 09 2008

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

CHARLES M. FERRANTE,

Plaintiff - Appellant,

v.

MICHAEL J. ASTRUE, Commissioner of
the Social Security Administration,

Defendant - Appellee.

No. 06-16698

D.C. No. CV-05-02274-PCT-MEA

MEMORANDUM^{*}

Appeal from the United States District Court
for the District of Arizona
Mark E. Aspey, District Judge, Presiding

Argued and Submitted May 15, 2008
San Francisco, California

Before: B. FLETCHER and RYMER, Circuit Judges, and DUFFY^{**}, Senior
District Judge.

^{*} This disposition is not appropriate for publication and is not precedent
except as provided by 9th Cir. R. 36-3.

^{**} The Honorable Kevin Thomas Duffy, Senior United States District
Judge for the Southern District of New York, sitting by designation.

Charles Ferrante appeals the order of the district affirming the Commissioner's decision that Ferrante is not eligible for Disability Insurance or Social Security Insurance benefits. We affirm.

Although failure to seek treatment for alleged depression does not constitute a legitimate reason to reject a diagnosis of depression, *Nguyen v. Chater*, 100 F.3d 1462, 1465 (9th Cir. 1996), substantial evidence supports the ALJ's decision not to credit Dr. Doss's opinion. The ALJ rejected Dr. Doss's opinion of Ferrante's mental limitations for the specific and legitimate reason that it was based on Ferrante's being worn down emotionally, which is not a clinical finding.

Magallanes v. Bowen, 881 F.2d 747, 751 (9th Cir. 1989). The ALJ could also find that Ferrante's daily activities undermined Dr. Doss's conclusion that Ferrante cannot handle stress or social interaction. *See Rollins v. Massanari*, 261 F.3d 853, 856 (9th Cir. 2001) (rejecting medical opinion because proffered limitations were inconsistent with "the level of activity that Rollins engaged in by maintaining a household and raising two young children, with no significant assistance from her ex husband"); *cf. Benecke v. Barnhart*, 379 F.3d 587, 594 (9th Cir. 2004) (indicating that the Commissioner cannot rely on a claimant's limited activities of daily living to demonstrate the ability to sustain work activity).

While Dr. Goren's explanation for his opinion is thin and this weighs against accepting it, *see* Social Security Ruling 96-6p, *available at* 1996 WL 374180, nevertheless it is supported by the mental status and daily status examinations as well as Ferrante's GAF score, together with other evidence discussed by the ALJ.

Given this disposition, Ferrante's request for remand for determination of benefits or further proceedings is moot.

AFFIRMED.